

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for a
mandate in the nature of a writ of certiorari
under Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Kandure Mudiyanseelage Jayaratne,

330/4, Gayan Rice Mills,

4 Ela,

Polonnaruwa.

C.A.(Writ) Application No.308/2010

PETITIONER

Vs.

1. S.D.A.B. Boralessa,
Commissioner General of Lands,
7, Gregory's Avenue,
Colombo.
2. N.G. Panditharatne,
Divisional Secretary,
Thamankaduwa.

3. Kandure Mudiyanselage Kiribanda
85, 4 Ela.
Polonnaruwa.
4. R.M.D.P. Pushpa Kumara,
Assistant Commissioner of Lands,
Polonnaruwa.
5. The Attorney General,
The Attorney General's
Department,
Colombo 12.

RESPONDENTS

BEFORE

: S. Sriskandarajah J. (P/CA)

Deepali Wijesundera J.

COUNSEL

: Daya Guruge with R.Wimalaweera for
the Petitioner.

: Yuresha Fernando S.C. for the 1st, 2nd
4th and 5th Respondents

D.M.G. Dissanayake for the 3rd
Respondent.

ARGUED ON

: 05th July, 2012.

DECIDED ON

: 27th September, 2012

Deepali Wijesundera J.

The petitioner has filed this application in this court praying for a Writ of Mandamus against the 1st, 2nd and 4th respondents to conduct a proper inquiry into the complaint made by the petitioner. And also for a writ of certiorari to quash the transfer bearing No: NCP/TK/9/5 dated 05.11.2003, 632 dated 15.03.2004 and nomination made on 05/11/2003 and 17/11/2004.

The original recipient of the land in issue Kandure Mudiyansele Dingiri Banda had received two lands by His Excellency the President in 1983 on a grant under Sec. 19(4) and 19(6) of the Land Development Ordinance marked as **P1** and **P2**. The original grant holder has died in 1998. The 3rd respondent who claimed he was the eldest son of the deceased Dingiri Banda succeeded to the land. The petitioner has sent a letter dated 30/04/2008 (**P9**) to the 2nd respondent alleging that the 3rd respondent was not a son of the original grant-holder and has requested the grant issued to the 3rd respondent be cancelled. This letter is marked as **2R1** by the 2nd respondent.

The petitioner's argument was that the 3rd respondent is not a son of the original grant holder. Marking the birth certificate of the 3rd respondent as **P5** the petitioner stated that the father's name is not mentioned in the birth certificate. The petitioner also marked the marriage certificate of the original grant holder as **P3** his birth certificate as **P4** to show that the respondent is not a legal child of Dingiri Banda.

Producing documents **P9** to **P12** the petitioner argued his request to the 2nd respondent to hold an inquiry and cancel the grant given to the 3rd respondent was not allowed and that the 2nd respondent without holding a proper inquiry under the Land Development Ordinance asked him to resolve the matter in a court of law. The petitioner has filed a case in the Provincial High Court of Polonnaruwa which was later withdrawn.

The respondents denying the allegations of the petitioner stated that the 2nd respondent responding to the request of the petitioner summoned the parties for an inquiry under the Land Development Ordinance. Producing documents **2R6** and **2R7** the 2nd respondent stated that the petitioner did not come for the inquiry. The respondents argued that the petitioner was the oldest son of Dingiri Banda in a previous marriage which was not a registered marriage. Marking an affidavit given by Dingiri Bnda as **2R3** the respondents stated that the 3rd respondent is the eldest son of Dingiri Banda. The marriage certificate of the 3rd respondent and his children's birth certificates were produced marked as **2R4** and **2R5(a)** and **2R5(b)** which documents states Dingiri Banda as the 3rd respondents father.

What this court has to decide is whether the commissioner of Lands has given a fair hearing to the petitioner. Letters marked **2R6** and **2R7** shows that the 2nd respondent was summoned for an inquiry he has been asked to come with documents to prove his title. **P12** shows that the respondents have acted on the request made by the petitioner. After he failed to present himself at the inquiry, he cannot ask this court to issue a Writ of Mandamus to compel the 1st, 2nd and 4th respondents to hold an inquiry now.

The affidavit given by the original grant holder marked as 2R3 shows that the 3rd respondent is the oldest child of Dingiri Banda in a marriage by habit and repute. This affidavit secures the rights of the 3rd respondent since the Land Development Ordinance does not interpret the word spouse anywhere. Therefore the oldest child can be from a legal marriage or a marriage by habit and repute. The 2nd respondent after perusing these documents had come to the conclusion that the 3rd respondent is the oldest child of the original grant holder.

The grant to the 3rd respondent was given in 2003 the petitioner had objected to it in 2008 almost five years after the grant was issued. He has not given a valid reason for the delay.

For the aforesaid reasons I see no valid reason to issue a Writ of Mandamus or Certiorari against the respondents. The application of the petitioner is dismissed with costs fixed at Rs. 10,000/=

JUDGE OF THE COURT OF APPEAL.

S.Sriskandarajah J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL